

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

05-10085 WGY
TRUSTEES OF THE PAINTERS & ALLIED
TRADES DISTRICT COUNCIL NO. 35
HEALTH AND WELFARE, PENSION AND
ANNUITY FUNDS

Plaintiffs

v.

Dauphinais Construction Co.

Defendant

and

Pelletier & Sons, Inc.

Reach and Apply Defendant

and

Component Assembly Systems, Inc.

Reach and Apply Defendant

and

Drywall, Ltd.

Reach and Apply Defendant

MAGISTRATE JUDGE. *SB*

RECEIPT #

AMOUNT \$ *150*

SUMMONS ISSUED *yes*

LOCAL RULE 4.1 *1*

WAIVER FORM *1*

MCF ISSUED

BY DPTY. CLK. *Form*

DATE *1/1*

Civil Action No.

COMPLAINT

COUNT I

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq., brought by the Trustees of the Painters & Allied Trades District Council No. 35 Health and Welfare, Pension and Annuity Funds ("Funds" or

“Plaintiff Funds”) for damages and injunctive relief arising from unpaid and delinquent contributions.

2. This Court has jurisdiction pursuant to 29 U.S.C. §1132(e) (1) and venue lies in this district pursuant to 29 U.S.C. §1132(e) (2).

3. Each of the Plaintiff Funds is a "multi-employer plan" within the meaning of Section 3(37) (A) of ERISA, 29 U.S.C. §1002(37) (A), and is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The Plaintiff Funds have a principal office at and are administered from 25 Colgate Road, Roslindale, MA.

4. Defendant Dauphinais Construction Co. (“Dauphinais”) is an "employer" within the meaning of 29 U.S.C. §1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. §152(2) and (6) and has a principal place of business at 23 Village Inn Road, Westminister, MA 01473.

5. Painters & Allied Trades District Council No. 35 (“Painters Union”) is a "labor organization" within the meaning of 29 U.S.C. §152(5).

6. At all material times, Defendant was obligated by the terms the collective bargaining agreement between it and the Painters Union and by the terms of the Agreements and Declarations of Trust for each of the Plaintiff Funds to make contributions and remittance reports on behalf of its employees represented by the Painters Union to the Plaintiff Funds.

7. Defendant has failed to make required contributions in the sum \$241,451.34 for the months of October and November 2004 in violation of Section 515 of ERISA, 29 U.S.C. §1145.

COUNT II AS AGAINST REACH AND APPLY DEFENDANT
PELLETIER & SONS, INC.

8. Plaintiff Funds hereby sets forth and incorporates by reference Paragraphs 1 through 7 of this Complaint.

9. Pelletier & Sons, Inc. is a duly organized Massachusetts corporation with a usual place of business at 552 Oak Hill Road, Fitchburg, MA 01420.

10. Upon information and belief, Defendant Dauphinais entered into agreements with Pelletier & Sons, Inc. to perform labor on three projects known as “BioLabs” in Ipswich, MA, “125 High Street – Price Waterhouse” in Boston, MA and “125 High Street – 5th Floor” in Boston, MA.

11. Pursuant to its contracts with Dauphinais, Reach and Apply Defendant Pelletier & Sons, Inc. is obligated to make periodic payments to Defendant Dauphinais for work performed by Defendant Dauphinais on the projects named in Paragraph 10 of this Complaint.

12. Upon information and belief, Pelletier & Sons, Inc. is making periodic payments to Dauphinais for work performed on the projects named in Paragraph 10 of this Complaint.

13. Plaintiff Funds believe and therefore avers that unless they can reach the funds from Reach and Apply Defendant Pelletier & Sons, Inc., they will be irreparably harmed because if Pelletier & Sons, Inc. pays the funds over to Dauphinais, the Plaintiff Funds will be unable to recover the contributions owed by Dauphinais.

14. Plaintiff Funds have no knowledge of any real estate or other assets of Defendant Dauphinais that can be reached by Plaintiff Funds.

COUNT III AS AGAINST REACH AND APPLY DEFENDANT
COMPONENT ASSEMBLY SYSTEMS, INC.

15. Plaintiff Funds hereby sets forth and incorporates by reference Paragraphs 1 through 7 of this Complaint.

16. Component Assembly Systems, Inc. is a duly organized New York corporation doing business in Massachusetts at 260 Salem Street, Medford, MA 02155.

17. Upon information and belief, Defendant Dauphinais entered into an agreement with Component Assembly Systems, Inc. to perform labor on a project known as “Hancock Building – Floors 44 through 48” in Boston, MA.

18. Pursuant to its contract with Dauphinais, Reach and Apply Defendant Component Assembly Systems, Inc. is obligated to make periodic payments to Defendant Dauphinais for work performed by Defendant Dauphinais on the project named in Paragraph 17 of this Complaint.

19. Upon information and belief, Component Assembly Systems, Inc. is making periodic payments to Dauphinais for work performed on the project named in Paragraph 17 of this Complaint.

20. Plaintiff Funds believe and therefore aver that unless they can reach the funds from Reach and Apply Defendant Component Assembly Systems, Inc., they will be irreparably harmed because if Component Assembly Systems, Inc. pays the funds over to Dauphinais, the Plaintiff Funds will be unable to recover the contributions owed by Dauphinais.

21. Plaintiff Funds have no knowledge of any real estate or other assets of Defendant Dauphinais that can be reached by Plaintiff Funds.

COUNT IV AS AGAINST REACH AND APPLY DEFENDANT
DRYWALL, LTD.

22. Plaintiff Funds hereby sets forth and incorporates by reference paragraphs 1 through 7 of this Complaint.

23. Drywall, Ltd. is a duly organized Massachusetts corporation with a usual place of business at 1020 Turnpike Street #12, Canton, MA 02021.

24. Upon information and belief, Defendant Dauphinais entered into agreements with Drywall, Ltd. to perform labor on projects known as “Boston University Sports Arena” in Boston, MA, “Boston College High School” in Boston, MA and “Boston College Yawkey Athletic Center” in Chestnut Hill, MA.

25. Pursuant to its contracts with Dauphinais, Reach and Apply Defendant Drywall, Ltd. is obligated to make periodic payments to Defendant Dauphinais for work performed by Defendant Dauphinais on the projects named in Paragraph 24 of this Complaint.

26. Upon information and belief, Drywall, Ltd. is making periodic payments to Dauphinais for work performed on the projects named in Paragraph 24 of this Complaint.

27. Plaintiff Funds believe and therefore aver that unless they can reach the funds from Reach and Apply Defendant Drywall, Ltd., they will be irreparably harmed because if Drywall, Ltd. pays the funds over to Dauphinais, the Plaintiff Funds will be unable to recover the contributions owed by Dauphinais.

28. Plaintiff Funds have no knowledge of any real estate or other assets of Defendant Dauphinais that can be reached by Plaintiff Funds.

WHEREFORE, Plaintiff Funds demand that with respect to Defendant Dauphinais judgment enter in accordance with Section 502(3) of ERISA, 29 U.S.C. §1132(g) (2) and request that the Court:

1. Determine and Award to the Plaintiff Funds the following amounts:
 - a. the Defendant's unpaid contributions;
 - b. interest on those contributions from the date the payment was due;
 - c. liquidated damages in an amount equal to the greater of interest on the unpaid contributions or 20% of the unpaid contributions;
 - d. all costs and reasonable attorney's fees incurred by the Plaintiff Funds in connection with this action; and
2. Permanently enjoin the Defendant from violating its obligations to make contributions and provide remittance reports to the Funds under the terms of its collective bargaining agreements with the Painters Union and the respective Agreements and Declarations of Trust; and
3. Order such other and further relief as this Court may deem just and proper.

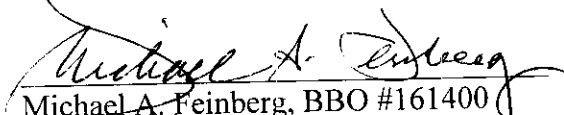
WHEREFORE, Plaintiff Funds further demand that with respect to Reach and Apply Defendants Pelletier & Sons, Inc., Component Assembly Systems, Inc. and Drywall, Ltd.:

1. That Reach and Apply Defendants Pelletier & Sons, Inc., Component Assembly Systems, Inc. and Drywall, Ltd. be forthwith restrained and enjoined from transferring, alienating, or paying Defendant Dauphinais any sums owed by Reach and Apply Defendants Pelletier & Sons, Inc., Component Assembly Systems, Inc. and Drywall, Ltd. to Defendant Dauphinais;

2. That the Court permit the Plaintiff Funds to reach and apply the funds due or to be due from Reach and Apply Defendants Pelletier & Sons, Inc., Component Assembly Systems, Inc. and Drywall, Ltd. to Defendant Dauphinais to any judgment the Plaintiff recovers against Defendant Dauphinais; and
3. Order such other and further relief as this Court may deem just and proper.

Respectfully submitted,

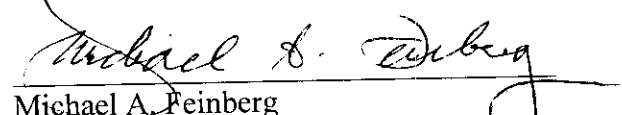
FEINBERG, CAMPBELL & ZACK, P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976


Michael A. Feinberg, BBO #161400
Attorney for Plaintiff Funds

Dated: January 12, 2005

CERTIFICATE OF SERVICE

I, Michael A. Feinberg, hereby certify that I caused a copy of the foregoing Complaint to be mailed on January 12, 2005 by certified mail, return receipt requested, to the United States Secretaries of Labor and Treasury.


Michael A. Feinberg

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Trustees of the Painters & Allied Trades District Council No. 35 Health and Welfare, Pension and Annuity Funds
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- 05 • 10085 WGY
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
-
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☐
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☐
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☐
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Michael A. Feinberg, Esq.ADDRESS 177 Milk Street, Boston, MA 02109TELEPHONE NO. 617-338-1976

JS-44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Trustees of the Painters & Allied Trades
District Council No. 35 Health and Welfare,
Pension and Annuity Funds

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Pelletier & Sons

County of Residence of First Listed Worcester

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RS1 (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 420 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

collection of delinquent fringe benefit contributions, ERISA 29 U.S.C. §1001, et seq

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$241,451.34

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE Jan 12, 2005
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Michael A. Feinberg

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE